

# City of Bay Village

Council Minutes, Committee Session  
Conference Room  
Paul Koomar, President of Council, Presiding

September 28, 2015  
7:30 p.m.

Present: Clark, Henderson, Koomar, Lee, Lieske, Tadych, Vincent, Mayor Sutherland

Also Present: Law Director Ebert, Finance Director Mahoney, Director of Public Safety/Service Director Thomas, Police Chief Spaetzel

## AUDIENCE

The following members of the audience signed in this evening: Marty Mace, Dick Majewski, Richard Fink, Jerrie Barnett, Dave Semler, Pam Cottam. Lydia DeGeorge, Kent Silverberg, Chanda Neely, John and Carole Guska.

President of Council Koomar called the meeting to order at 7:30 p.m.

## ANNOUNCEMENTS

**Mayor Sutherland** read a Proclamation to retiring Service Department Foreman Gordon Evans on the occasion of his retirement from the City of Bay Village following 34 years of service to the City. Mr. Evans thanked the administration and City Council for the very special recognition he was afforded this evening in the presence of his family. Applause, congratulations and well-wishes followed.

## COMMITTEE OF THE WHOLE

### ENVIRONMENT, SAFETY AND COMMUNITY SERVICES COMMITTEE-Lee

Review of pending Ordinance 15-37 (first reading May 4, 2015) amending Chapter 527 regarding Littering and Unsolicited Publications

Mr. Lee advised that Ordinance No. 15-37, which has been on first reading since May 4, relates to the delivery of unsolicited telephone books left underneath the snow, causing damage to snow removal equipment. Mr. Lee stated that the feedback he is getting is that the ordinance should be left as is and not move forward. The City should communicate with the distributors of the publications and encourage them to not distribute them in the winter months, or distribute them to the front porches or receptacles close to the sidewalks and driveways in the winter months.

Mr. Koomar noted that this evening he received a phone book in a plastic bag on his front steps, noting that the notifications to the distributors is effective.

Mr. Ebert suggested removing the ordinance. Mr. Vincent asked about the possibility of waiting until the winter comes to be sure that the request by the City is being followed before removing the ordinance, to avoid having to reintroduce the measure. Mr. Koomar stated that he prefers to remove the ordinance. If people are not responsive to the administration's efforts it can be reintroduced.

Review of pending Ordinance 15-38 (first reading May 4, 2015) regarding Sidewalks to be cleared of Ice and Snow.

Mr. Lee commented that a new version of pending Ordinance 15-38 was circulated in the Council packets this past weekend. The new language is contained in paragraph (b), and provides for a fine of \$50.00 for the first infraction, and then \$100 for each occurrence thereafter. Mr. Lee stated that the feedback he has received on this ordinance is rather than the City having the ordinance allowing the City to do the snow removal and charging the residents \$100 as was discussed in the past, this is an alternative approach to increase the fines. Mr. Henderson pointed out that the fines have not been increased in many years. They still stand as \$5.00 and \$10.00 as originally adopted in the 1970's. This approach would be to increase those to a more meaningful level and not include the language about allowing the City to do the work after notice and charging the homeowner \$100.

Mr. Koomar asked if currently the first violation is a warning. Mayor Sutherland stated that generally it is a warning. Mr. Henderson stated he is in support of that warning method. Mr. Tadych commented that he believes the fine is too high, and Mr. Henderson agreed, noting that it is higher than the rate of inflation would have increased it in the period of time since originally established. Mr. Clark noted that although the Council is not in agreement on whether the fine should be \$25 or \$50 for the first infraction, this is a safety issue that needs to be addressed.

Mr. Henderson pointed out that he asked Police Chief Spaetzel for a record of the number of times the existing law has been enforced by the Police Department. It has been enforced once in the last five years by the Police Department. Mr. Henderson stated that he believes it would make more sense to enforce the existing law and make an inflation adjustment to the former \$5.00 and \$10.00 fines, then to jump to \$50 and \$100. Mayor Sutherland stated that the reason it only went to the Police Department once is because the Building Department handles it. They would go out, make the initial contact, and if they don't get a response back from the residents at all they go to the Police Department. Mr. Henderson asked if there are records that can be supplied with the number of times that has been done. Mayor Sutherland responded affirmatively.

Mr. Ebert stated that the fine of \$5.00 and \$10.00 will not be effective in causing people to shovel their walks. There must be a fine that is severe enough to cause the homeowner to respond. The City tries to be sensitive but the concern is for the school children walking to school. Mr. Henderson stated the inflationary amount would be \$18.00 for the first infraction, and \$36.00 thereafter.

Mr. Vincent noted that if a property owner gets fined \$50.00 after warnings, they will most probably never let it happen again. Mr. Henderson asked the Mayor if there is any chance the City could work with the School District to plow the sidewalks in the areas near the schools so the children can get safely to the schools. Mayor Sutherland stated that when there is a major snow event, all of the personnel are in the trucks. They work on making sure the main roads are cleared, then the

secondary roads. When there is a major snow event it usually lasts more than one day. The personnel are working around the clock trying to keep up with the snow. Once they get the primary and secondary roads done they will go into the side streets. When all of that is done is when we will do our sidewalks around City Hall and the parks, and the same thing with the schools. There are probably liability issues for the schools to do something on property that is not theirs.

After further discussion it was agreed to proceed with a fine schedule of \$25.00 for the first infraction, \$50.00 for the second, and \$100 for each occurrence thereafter. The results of the ordinance will be reviewed after one year, and changed if necessary. Section (c) of the amended ordinance will need to be adjusted to remove the previous fines quoted therein.

Mayor Sutherland will use the email blast and the newsletter to communicate the requirements of the new ordinance with residents.

Mr. Lee asked if the fine can be added to the property owners' tax duplicate if it remains unpaid. Mr. Ebert stated that it can be added after a court appearance.

Ordinance No. 15-37 will be placed on the agenda for the regular meeting of Council to be held October 5, 2015 for second reading, as amended.

#### **PUBLIC IMPROVEMENTS, STREETS/SEWERS/DRAINAGE COMMITTEE-Tadych**

##### Review of proposed Ordinance amending Codified Ordinance Section 913.08, regarding Downspouts, Roofs and Drains.

Mr. Tadych stated that he spoke with President of Council Koomar and met with Law Director Ebert as well to review the ordinance. An amendment was made to the draft to add a 5 feet distance for the flow of the water as a result of disconnection, and addressed the splashing so that the downspout is not in the air when the water hits the ground. This evening a Public Improvements, Streets/Sewers and Drainage Committee reviewed the ordinance and made suggestions for discussion. The question came up as to how the 5 feet range was developed. Mr. Thomas stated that the 5 feet flow away from the property is a recommendation of the City's consulting engineer. Mr. Lee confirmed with Mr. Thomas that the intent is that the discharge 5 feet away from the foundation is so the water does not migrate back in toward the structure. Mr. Koomar asked Mr. Thomas if the five feet matters if a property owner does not have a footer drain or there is no basement below the dwelling. Mr. Thomas stated that if it meets the 5 feet requirement and there is nothing that pushes it back towards the foundation it will be acceptable.

The Public Improvements, Streets, Sewers and Drainage Committee also made a suggestion that the words "any structure" is better than the term "the house." Mr. Thomas stated that the biggest concern is basement flooding, and "house" means "house." Structure could mean a garage. Mr. Lee asked if the structure is a garage with nothing underneath it, could the discharge be two feet away from the foundation and not be an issue. Mr. Thomas stated that the engineers look at it from the standpoint of the possibility that water migrating back could actually flood even a concrete surface, which is why there is the 5 feet recommendation. Mr. Koomar stated that he is thinking of property lines that may be tight, and situations where we would want them to

disconnect their downspouts but 5 feet might be an issue. Mr. Thomas stated that if there is a question or problem with the discharge being not 5 feet away the Service Department would respond and assist with that issue. Mr. Tadych stated that he could not have five feet flow on his property in any direction without flooding the driveway or the sidewalk, and there are probably a lot of homes like that. Mr. Koomar noted that he does not want that to be a deterrent for someone not to disconnect, if they can do it properly and not flood themselves or the neighbors.

Mr. Tadych stated that he believes 5 feet is a good number, and if it can't be done as suggested maybe it could be done with rain barrels. Mr. Koomar asked Mr. Thomas about the requirement for an overflow for rain barrels so that they don't flood the property. He noted that the consulting engineer, Bob Greytak, had stated that rain barrels can fill up, overflow and run right down into the footer drains. The overflow would then have to be an extension out 5 feet, or it would have to flow into the storm sewer.

Mr. Lee commented that the committee also talked about the possibility of an incentive reduction in the sewer rental fee for purchasing rain barrels or boxes. Mr. Lee related a suggestion from his neighbor as to whether the City could purchase some of these things that homeowners could buy from the City at a discounted price to incentivize homeowners to take some of these measures. Also, if the City could use some of its purchasing power to get a better price that would lower the price for homeowners purchasing these items. There was also a discussion about the idea of a committee of interested homeowners who have some expertise in these areas and are willing to volunteer their time and come forward with some ideas to design a solution or a series of solutions for private property owners to do on their own property to manage storm water. Mr. Lee and Mr. Henderson stated that they have been approached by residents that would be interested in offering ideas to encourage people to disconnect their downspouts. Mr. Henderson noted that this ties in with Mr. Lee's idea of having a committee of residents.

Mr. Lee noted that the language of the ordinance begins by saying the downspouts, roof and yard drains shall not be connected to any sanitary sewer. Then it goes on to say the disconnection shall be permanent. We are obviously talking about all of these things for localized management of storm water on individual properties to try to encourage reducing the amount of water going into the storm sewer system. Mr. Tadych stated that he believes part of the idea for the flash boxes, or possibly even the barrels being purchased by the City and sold directly to the homeowners is that they would be approved boxes and barrels rather than having people go out and purchase something that is ineffective.

Mayor Sutherland stated that rain barrels are available through the county, at a reasonable price. Mr. Tadych stated that Council is looking at the effectiveness of the purchase, and Mr. Clark added that the Council is also looking at continuity throughout the City and something that the City would approve. Mr. Vincent added that an additional concern would be the 5 feet requirement and making sure those barrels we get from the County would fill that requirement.

Mr. Lee asked if there has been a discussion about screening for rain barrels, as is required with trash containers. Mr. Koomar asked Law Director Ebert to review the screening requirements for trash containers with the possibility of using the same requirement for rain barrels.

Mr. Tadych stated that another point brought forth by the Public Improvements, Streets, Sewers and Drainage Committee was the use of the term “splashing.” Is that a technical term? Mr. Thomas said the term “splashing” is used universally.

Mr. Vincent asked if it is known what the enactment of this ordinance would do to contribute to storm water savings. Mayor Sutherland stated that all they know is that approximately 70% of the water being treated at the Rocky River Wastewater Treatment Plant is clean water. Mr. Clark noted that the only measurement would be the next flow testing. Mayor Sutherland stated that the next flow testing will be done in the spring of 2016.

Mr. Henderson noted that a resident has asked if there are any Environmental Protection Agency (EPA) regulations about the amount of water that can be splashed onto properties. Mayor Sutherland responded that there are no regulations. Mr. Koomar noted that the City has an ordinance that states you cannot flood your neighbors.

Dave Semler, Russell Road, stated that he has seen literature about allowing so much impervious area. The water must be maintained on your property. They don't want the water going into the storm sewer system immediately. There are some regulations, especially with commercial property, and they are starting to apply to residential areas as well.

Review of proposed Ordinance Section 913.11 regarding Corrective Order and Expenses Therefor.

Mr. Tadych stated that the Public Improvements, Streets, Sewers and Drainage Committee this evening discussed whether there should be a permit for the disconnection of downspouts, yard drains and collectors of surface water, and the corrective order and expenses therefor, and whether the permit should be free.

Mayor Sutherland stated that it will depend on the kind of correction. If the homeowner is just disconnecting downspouts, or disconnecting because there is a cross connection, there may be plumbing costs. It would depend on the complexity of the problem. The answer would be with the Building Department. A permit would not be necessary to disconnect the downspouts. Cross connections being rectified would be governed under the Building Department.

Mr. Tadych stated that the idea expressed by the committee is that if a permit would be required for a simple downspout disconnection it should be free.

Mr. Lee stated that if there is not a permit required, how will the City know to do the inspection. Mr. Thomas stated that the City would not know of a disconnection unless the property owner called, or if it is done improperly and the neighbor calls. Certainly there would be an inspection if there is an addition or some work that falls within the scope of requiring a building permit.

Mr. Tadych stated that the last question was whether the Director of Public Service and Properties was going to be the only person to insure proper connection. The words “or designee” will be added after the Director of Public Service and Properties in the sentence that reads: “All

work shall be inspected by the Director of Public Service and Properties (*add "or designee"*) to assure proper connection or disconnection."

Mr. Koomar addressed Director Thomas, noting that the Service Department has been doing a good job with crack sealing of roads. There is a section of Lake Road from Cahoon Creek to Columbia Road, about 1.2 miles. The first 25% of the work has been done, and Mr. Thomas is going to meet with the state on other things in that area. That one section to Columbia is of importance for this fall. Mr. Thomas stated he has nothing to report from the state yet, however, the Service Department will begin crack sealing again next week along Lake Road.

In a follow-up from the Bruce, Russell, Douglas, Lake Road meeting, Mr. Greytak mentioned that he was still doing engineering. Mr. Koomar asked when Mr. Greytak will complete that engineering and schedule some initial discussions with the administration. Many residents have asked that question. Mr. Thomas will report back to Mr. Koomar.

Mr. Tadych stated that both he and the Mayor have received emails about the railroad tracks at Columbia Road. Mr. Thomas has contacted the railroad, but has not heard back as yet.

#### **FINANCE & CLAIMS COMMITTEE – Clark**

**Mr. Clark** reported that a Finance and Claims Committee meeting was held on Monday, September 21, 2015. Finance Director Mahoney reviewed the new municipal income tax ordinance with the Finance Committee. The ordinance will be placed on first reading on October 5, 2015.

Mr. Henderson noted that he has asked Director Mahoney to learn if the City is required by the state to begin taxing gaming winnings. Mrs. Mahoney has received information from the Chief Legal Officer of the Regional Income Tax Agency (RITA) indicating that the City of Bay Village is required to tax gaming winnings even though Bay Village is a charter city. Mr. Ebert has been asked to offer his opinion on that as well, because Mr. Henderson is not in favor of taxing those winnings unless absolutely required to do so. Mrs. Mahoney stated that there can be nothing that conflicts with Ohio Revised Code 718. Mr. Henderson's point is the question of whether our charter gives us any legal standing. Mr. Ebert often reminds Mr. Henderson that the charter supersedes state law in some cases, and in this case he would like Mr. Ebert's comment why it doesn't in this case but it does in all other cases Mr. Henderson brought up the question. Mayor Sutherland stated that it is a constitutional amendment. Mrs. Mahoney stated that the City gets the authority to tax from the state.

#### **PLANNING, ZONING & PUBLIC GROUNDS & BUILDINGS COMMITTEE-Lieske**

##### Review of Proposed Chapter 1158

Mr. Koomar stated that Mr. Ebert and he met with SAFEbuilt, Inc. Chief Building Official John Cheatham on Friday, September 25, 2015 to get his input on Chapter 1158. The goal is to have an updated draft for review by a Planning, Zoning, Public Buildings and Grounds Committee to be scheduled by Mrs. Lieske. Mr. Koomar will refer whatever current draft is ready to the Planning

Commission for their next meeting. Mr. Koomar highlighted the following from the draft of the proposed Chapter 1158.

**1158.03**

Item 3 – Air conditioning and ventilation equipment is to stay.

Master Radio and Television Antenna – Mr. Cheatham’s opinion is that it represents, when using the word “Master,” it references cell phone towers and antenna like those on top of the Knickerbocker Apartments. That is not something we would not want in an R4 Attached Residence District.

Carports are not common to Bay Village. Detached garages are to stay in the event of row houses with garages behind the buildings.

Mr. Koomar asked that the Planning and Zoning Committee review rear buffering in the case of adjoining property owners. The code requires 10 to 12 feet and there is an evergreen component.

Mr. Koomar suggested the consideration of 10 units per acre for the density. He asked Council’s thoughts regarding density. Mr. Henderson stated that he went online and looked at the site Paul LeBlanc had mentioned as an example and it looked fine. Mr. Vincent expressed agreement. Mr. Lee stated that he would like to identify some examples of 10, 12, or 16 unit density in nearby destinations such as Rocky River and Crocker Park in Westlake to view. Mr. Koomar asked approval to use the number 10 per acre for density as a place holder in forwarding this to the Planning Commission. Mrs. Lieske stated that she would also like to see some developments as well. Mr. Lee asked if there is a way to learn from Rocky River, Avon Lake, and Westlake’s Crocker Park the densities of their developments. Mayor Sutherland will refer back to Mr. Paul LeBlanc for information. The Mayor noted that another source might be the Cuyahoga County Planning Commission. Mrs. Lieske noted that developments around this area might be more accessible for people to view.

Mr. Koomar stated that Mr. Cheatham liked the approach Mr. LeBlanc had taken with the Architectural Features and Spatial Requirements on Pages 2 and 3 of the draft ordinance. Mr. Lee stated that an increase in density might have an effect on some of the numbers in the tables on the proposed draft. Mayor Sutherland will check this with Mr. LeBlanc.

Common Space requirements on Page 4 were removed because it talked about common space that might be dedicated to the City which probably wouldn’t occur. If it would occur, it would be a separate side agreement. If someone wanted to donate a specific parcel, it could be taken under advisement. Mayor Sutherland suggested talking to Mr. LeBlanc about this further. The Mayor cautioned against striking something without conferring with the experts to learn their rationale.

Mr. Ebert stated that when applications come before the Planning Commission they are referred to various departments to get their comments. Mr. Ebert and Mr. Koomar are changing the draft to approval of the Planning Commission, rather than City Council to require the applicant to obtain City services for maintenance of commonly held properties where the public health, safety and/or welfare may require.

Mr. Koomar referred to Item (2) (b) on Page 6 of the draft, regarding a perimeter buffer. He stated that he likes the detail listed in the draft, which he believes goes above the City's current buffering ordinance. The only thing in the current buffering ordinance is a 50% requirement for evergreen trees. In talking to Mr. Cheatham, he suggested that might be too uniform. The equivalent of one tree per 50 feet, with 1/3 being evergreens, as outlined in the new draft might give the flexibility to insure that an adjoining property owner is buffered with latitude on how that is accomplished. Mr. Koomar suggested Mrs. Lieske discuss this with the Planning and Zoning Committee and the Planning Commission.

Mr. Ebert discussed the Approval Process 1158.05, beginning on Page 7. Mr. Ebert stated that this is related to the efforts of the Mayor to try to expedite the approval process and make it less cumbersome. One issue discussed today with the Mayor was the Architectural Board of Review and the need to incorporate design standards in conjunction with this ordinance.

Mr. Koomar stated that applications for rezoning property would have to go through the entire process, including the requirements of Chapter 1129. Council's rezoning is just going to the ballot. Mr. Ebert suggested just referencing it to the charter, and then referencing it to Chapter 1129. Mayor Sutherland stated that one of the reasons Mr. LeBlanc specifically included the design criteria is because it is so difficult to navigate through the City Code. It was important for Mr. LeBlanc to include the review standards in the ordinance. Mr. Koomar stated that this ordinance is for rezoning. A developer would not put thousands of dollars and time into a proposed development just to get rezoning on the ballot. Mayor Sutherland will confer with Mr. LeBlanc.

Mr. Koomar stated that he will meet further with Mr. Cheatham when he returns from vacation and if some of the things that are being removed are better than our existing ordinance they will be retained. This also applies to buffering. The Mayor noted that the ordinance was intended to supersede any conflicting ordinances.

Mr. Koomar noted that it is easier to clean up the ordinance now and have it be very clear to future generations. Mr. Tadych stated that one of his major concerns is the taxing of the existing sewers, both sanitary and storm. We are pulling out some of that verbiage but need to include some language to reference the sewers. Mr. Ebert stated that it is up to the City Engineer to make recommendations and approvals regarding the sewers.

Mrs. Lieske raised the question of Section 1158.02 specifically identifying an area that may be mentioned in the Master Plan. Residents have said that they don't know specifically the areas that may be affected. This will be reviewed further with the Planning Commission. Mayor Sutherland had stated previously that the City had approved the 1999 Master Plan but did not adopt it. Resident Mr. Majewski noted that it was accepted as a guide.

Mr. Clark suggested framing a time-line for adoption of the new Chapter 1158. Mr. Koomar stated that he would like the Planning Commission to give their input the first half of October, and Council to finish their work by the end of October or beginning of November. Council could place the ordinance on first reading mid-November.

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The next meeting of the Planning Commission will be October 21. Mr. Koomar stated he will keep sharing drafts with the Chairman of the Planning Commission.

Mr. Vincent suggested a field trip to view neighboring sites within the next two weeks. Mayor Sutherland will seek information from the Cuyahoga County Planning Commission.

#### **RECREATION & PARK IMPROVEMENT COMMITTEE-Henderson**

**Mr. Henderson** had no further report this evening. Mr. Koomar suggested that Mr. Henderson schedule a Recreation and Park Improvement Committee meeting to further discuss any suggestions relative to the sculpture donated to the City which is mounted at the aquatic center. Mr. Lee asked if the method for securing the sculpture in place has been improved. The Mayor stated that it is not perfectly even on the bottom so it may have to be shifted slightly. They are also intending to landscape around it, but will hold on that for now.

#### **SERVICES, UTILITIES & EQUIPMENT COMMITTEE-Vincent**

**Mr. Vincent** had no report this evening.

#### **MISCELLANEOUS**

**Mayor Sutherland** announced that the City Hall Paving Project will begin on Monday, October 5, 2015. There will be limited access to the north side of the parking lot. Completion of the project is dependent upon the weather.

**Thomas Kramer**, the Council intern from St. Ignatius, gave a brief report about pervious and impervious surfaces. Thomas was thanked for taking the time to do this research.

Finance Director Mahoney advised that City Hall will be open on Columbus Day, October 12, due to the fact that some employees have swapped the holiday with the day after Thanksgiving.

Mr. Koomar advised that on September 21, 2015, resident Joe Hochman presented City Council and the administration with a letter dated September 21, 2015. Page 1 states that "Council President Koomar recommended that I use contractor Bill Votruba to do the work. He had built concrete block structures for the City." Mr. Koomar stated emphatically that he does not know Mr. Votruba, he has no engineering experience, he has never recommended an engineer to any resident while on Council, nor would he because he does not have the professional expertise to do so. Mr. Koomar takes strong offense to Mr. Hochman's statement. Mayor Sutherland stated that she does not believe Mr. Votruba has done any business with the City.

There being no further discussion, the meeting adjourned at 9:00 p.m.

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Paul Koomar, President of Council

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Joan Kemper, Clerk of Council